



DEPARTMENT OF THE PROSECUTING ATTORNEY

Peter B. Carlisle, Prosecuting Attorney
Douglas S. Chin, First Deputy Prosecuting Attorney

POWER, DUTIES AND FUNCTIONS

Voters of Oahu elect the prosecuting attorney every four years. Under the city charter, the prosecuting attorney shall:

- a) Attend all courts in the city and county of Honolulu and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the state and the ordinances and rules and regulations of the city;
- b) Prosecute offenses against the laws of the state under the authority of the attorney general of the state;
- c) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges;
- d) Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration; and
- (e) Investigate all matters that may properly come before the prosecuting attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the prosecuting attorney.



Prior to her appointment to the bench as a district court judge in the First Circuit, State of Hawaii, Acting Prosecutor Douglas Chin acknowledges Deputy Prosecuting Attorney Sherri-Ann Iha's 18 years of service with The Department of the Prosecuting Attorney in presenting her with a koa plaque.

ORGANIZATION OF THE DEPARTMENT

The Department of the Prosecuting Attorney (PAT) is organized into six divisions of deputy prosecuting attorneys (DPAs). A division chief oversees each division. In some divisions, one or more team captains supervise smaller groups as well. Support staff in each division, under the direction of a clerical supervisor, assists the prosecutors with their work.

In addition, PAT legislates for changes in the law that will benefit crime victims and law enforcement, provides outreach to the community through full-time community prosecutors, and participates actively in specialty courts such as drug court, mental health court and HOPE probation. Two more non-attorney divisions – an Investigative Services Division of 20 full-time investigators and a Victim Witness Kookua Services Division of 20 victim advocates, along with their respective support staff, provide further service to the community on behalf of PAT.

The six divisions of DPAs are the: (1) Career Criminal Division; (2) Domestic Violence, Juvenile Offenders and Elder Abuse Justice Division; (3) Trials Division; (4) Screening and Intake Division; (5) Appellate Division; and (6) Misdemeanor and Traffic Division. These are individually described below.

A. Career Criminal Division

In 1979, the Hawaii State Legislature recognized that “a substantial and disproportionate amount of serious crime is committed against the people by a relatively small number of multiple and repeat felony offenders (“career criminals”). The legislature established the Career Criminal Prosecution Program (CCP), Hawaii Revised Statutes, Chapter 845, to “support increased efforts by prosecuting attorneys’ offices to prosecute career criminals through organized and operational techniques that have

been proven effective in selected counties in other states.” Some of these techniques include enhanced sentencing, such as court-ordered consecutive sentencing; court-ordered mandatory minimum sentences which must be served before becoming eligible for parole; and extended term sentences; wherein sentences are increased if a jury (or judge if defendant waives his right to a jury) determines in a separate trial that the extended sentence is “necessary for the protection of the public.”

The Career Criminal Division (“CCD”) of the Honolulu Prosecutor’s Office was established over 30 years ago in response to Chapter 845. It is a highly skilled prosecutorial litigation unit that vertically prosecutes those offenders who are identified as career criminals from the acceptance of the case to its final conclusion. Today CCD consists of a division chief, 10 attorneys, two paralegals and four clerical staff.

Through this vertical approach, the CCD prosecutor becomes knowledgeable about individual career criminals, including his/her potential for dangerousness or his/her potential for rehabilitation. Handling the case from its inception also fosters a special working relationship between the police, witnesses, victims and the prosecutor. This approach permits continuity in prosecution and helps to ease the anxiety on the part of witnesses and victims.

In addition to prosecuting career criminal defendants, the deputies assigned to this division share responsibility with two other felony divisions in prosecuting felony sexual offenders. In addition, the deputies coordinate and cooperate with the United States Attorney’s Office, Hawaii Division, in the prosecution of all felons accused of possession of or use of firearms and ammunition. Because of dual jurisdiction in these cases, the coordination and cooperation results in achieving the maximum sentencing in these potentially volatile cases.

The types of cases handled by CCD deputies during fiscal year July 1, 2009 through June 30, 2010 run the entire gamut of the Penal Code, including crimes against persons, property crimes, drugs, and crimes against public administration and order. At the end of the fiscal year, CCD had 406 cases pending. Of those, six cases were pending indictment, 146 cases await trial, 117 cases await sentencing, and 137 warrants of arrest remain outstanding (representing absconded defendants).

During the fiscal year, new cases involving 223 career criminal defendants have been opened (representing 580 separate offenses), and cases involving 223 career criminal defendants (representing 524 separate offenses) have been disposed of either by trial or plea during the year. Of those cases disposed of, five defendants’ cases were dismissed by the prosecution, 12 defendants were acquitted, and 206 defendants or 92.4% were convicted. Of those convicted, 94.4% were convicted as charged, and 5.6% were convicted of lesser offenses. 90% of the convicted defendants received terms of incarceration and are prevented from committing further crimes for the duration of their sentences. Motions to revoke previously-granted probation were filed against 51 career criminal defendants during the year; 44 were granted and seven were either denied or withdrawn. The cases of 34 career criminal defendants are on appeal to the Hawaii appellate courts as of the end of June, 2010.

B. Domestic Violence, Juvenile Offenders and Elder Abuse Justice Division

The **Domestic Violence, Juvenile Offender and Elder Abuse Justice Division** specializes in the prosecution of domestic violence perpetrators, juvenile offenders under the age of 18, or offenders against elderly victims. It consists of one division chief, 20 attorneys, two paralegal assistants, six victim/witness counselors and 10 support staff organized into four teams. The four teams are discussed below.

The **Domestic Violence Felony Team** prosecutes all felony domestic violence cases along with some sexual assault cases. It consists of five attorneys. This team focuses on more serious violent offenses stemming from intimate relationships (husband-wife, boyfriend-girlfriend and same sex couples) and parent-child relationships.

In addition, this team also shares responsibility for prosecuting felony sexual assault cases. While the majority of these cases may involve child and adult victims victimized by perpetrators known to them, i.e., natural father, step-father, uncle, brother, boyfriend, neighbor, family friend, and other generally trusted acquaintances, this team also handles cases involving strangers, chronic child molesters and serial rapists.

The Domestic Violence Felony Team employs vertical prosecution to better deal with the dynamics of these cases. Through vertical prosecution, the assigned prosecutor works with the victims, witnesses, and police investigators from the inception of the case, up through preliminary hearings, grand jury, pre-trial motions, trial, and sentencing. In order to accomplish this, a prosecutor is on-call 24 hours a day to assist police with various aspects of the investigation and to then review the case and make appropriate charging decisions. This approach maintains continuity and enables this team to better handle the many challenges presented by these cases which typically involve uncooperative victims who recant or minimize their prior statements at court due to fear of and/or affection for the perpetrator. This same approach also allows attorneys and staff to better respond to the needs of often emotionally fragile and distraught victims of both domestic violence and sexual assault.

The **Domestic Violence Misdemeanor Team** specifically handles all misdemeanor family or household member abuse cases in violation of section 709-906 of the Hawaii Revised Statutes (“HRS”) and all family court restraining order violations. As such, this team is a high-volume unit that prosecutes the violence arising from intimate relationships (including spouses, boyfriend-girlfriend partners and same-sex couples) and parent-child relationships. It consists of seven attorneys.

This team also employs vertical prosecution to the extent that its prosecutors review, charge, and try their own cases. As part of this effort, each day a prosecutor responds to the police department receiving desk at about 3:00 a.m. and/or on weekends to review and eventually charge the cases involving misdemeanor defendants in custody. This helps ensure more consistency and better handling of these cases, which are made difficult, as the majority of victims are often reluctant and/or uncooperative to testify against the perpetrator. In addition, as many of these offenders and victims are the same individuals handled at the felony level, the misdemeanor and felony prosecutors share the same office wing to foster communication of significant developments and information involving domestic violence perpetrators and victims.

The **Juvenile Offender Team** prosecutes all juvenile offenders or persons under 18 years of age at the time they violate the law. It consists of six attorneys. This team handles cases from felonies, including sexual assault, robbery and murder, to misdemeanors and traffic offenders.

Offenders prosecuted include first-time offenders who commit less serious crimes who are subject to rehabilitative measures through the family court to dangerous individuals and repeat offenders who may be waived to adult court to be tried for more serious crimes.

This team also employs a modified form of vertical prosecution to the extent that they review, charge, and try the majority of their own cases, with some assistance at the initial conferral stage from the Screening and Intake Division.

The **Elder Abuse Justice Team** prosecutes all felony cases involving victims who are 60 years of age or older, and concentrates on the more serious and violent offenses committed against the elderly. At present, it consists of two full-time felony prosecutors with plans to incrementally increase staffing and expand responsibilities in the future as funding becomes available. While many of these cases involve situations where the elderly are victimized by perpetrators known to them, i.e., family, friends and other generally trusted acquaintances, this team also handles other crimes committed against this vulnerable class of victims by others.

The Elder Abuse Justice Team also employs vertical prosecution to better identify and respond to the unique challenges of these cases. Through vertical prosecution, a prosecutor works directly with the victims, witnesses, and police investigators from the inception of the case, up through preliminary hearings, grand jury proceedings, pre-trial motions, trial, and sentencing. In order to accomplish this, a prosecutor is on-call 24 hours every day to assist police with various aspects of the investigation and to review the case and make appropriate charging decisions. This approach maintains continuity and enables the prosecutor to better prosecute these cases which may involve disabled or reluctant victims. It also allows the prosecutor and staff to more effectively respond to this victim population with greater sensitivity.

C. Trials Division

The **Trials Division** is the largest division in the office and it handles most of the felony cases prosecuted on Oahu. These cases include murder, manslaughter, negligent homicide, sex assault, robbery, burglary, arson, assault, white collar crime, identity theft, campaign fraud, computer crime, drugs, and property crime. In addition to felony cases, the Trials Division handles most of the circuit court misdemeanor jury trials. All matters regarding the extradition of defendants to and from other states are handled by the Trials Division. Many high profile cases are handled by deputies from this division.

The Trials Division consists of 27 trial attorneys, one division chief, and five team captains (supervisors) of the five trial teams with the remaining 21 trial attorneys divided into those respective teams. Three paralegal assistants and 13 clerical staff support the division.

Some of the specialized teams within the Trials Division include a white collar crime unit, which prosecuted numerous high profile cases this year. Another group of attorneys specialize in the full-time prosecution of sex assault cases with a case load 100 percent concentrated in that area. This group employs vertical prosecution so that it may work closely with sex assault victims from the time a case is first brought to the prosecutor through post-sentencing motions.

From July 1, 2009 to June 30, 2010, the division completed about 2,000 cases.

For his outstanding work – and after a review of its cases nationwide – Llorente SIU selected DPA Scott Bell of PAT as its “Prosecutor of the Year 2009”. Bell successfully obtained a criminal conviction in one of the first theft and perjury cases involving workers’ compensation insurance fraud in this state.



D. Screening and Intake Division

The Screening and Intake Division (“SID”) screens most felony cases (except for domestic violence, elder abuse, and white collar cases which are handled by different divisions) brought to this department by the Honolulu police department and other state investigative agencies. SID’s primary role is to review felony cases and decide which to accept for prosecution, which to decline, and which need follow-up work. SID also reviews search warrants, handles preliminary hearings in District Court, prepares and presents cases to the Oahu Grand Jury, and prepares cases for information charging.

SID consists of one division chief, 12 attorneys, five support staff, and two paralegal assistants. To accomplish its tasks, SID dedicates three full-time prosecutors to review search warrants and criminal felony cases brought in by the various law enforcement agencies five days a week during work hours. Two more prosecutors are on-call after hours and all day on weekends.

and holidays to assist the police with various aspects of the investigation and once completed, to review the case and make appropriate charging decisions. The remaining seven prosecutors review, assess, and prepare felony cases brought to SID, and also cover preliminary hearings, grand jury, and the information charging process.

SID reviews and assesses a variety of felony offenses, including but not limited to homicide, robbery, assault, terrorist threatening, negligent homicide, identity theft, shoplifting, auto theft, and burglary.

For the period beginning July 1, 2009 and ending June 30, 2010, SID processed 159 grand jury cases, 162 preliminary hearings, and filed 956 information charging cases.

E. Appellate Division

The **Appellate Division** represents the State of Hawaii in all appeals from criminal, juvenile and traffic cases prosecuted by PAT. In addition to matters filed in the state appellate courts, including the Intermediate Court of Appeals and Hawaii Supreme Court, attorneys also respond to motions and original proceedings such as petitions for *habeas corpus* and writs of prohibition or *mandamus*. Such matters, responses and petitions are often extensive, requiring much research, writing and verbal skills.

The Appellate Division consists of seven attorneys, all of whom are assisted by a paralegal and two support staff.

Appellate attorneys also represent the State of Hawaii in federal court to argue *habeas corpus* proceedings in which the prisoner-petitioner contests the state court judgment. Federal habeas cases at times require hearings and additional proceedings before the federal district court of Hawaii. When these cases progress to the federal appellate level, the Ninth Circuit Court of Appeals based in San Francisco sets them for oral argument. The Appellate Division also files responses to petitions for writ of certiorari in the United States Supreme Court in Washington, D.C.

In addition, attorneys in the Appellate Division are called upon to provide research and reference assistance to both the administration and the other divisions within the department.

In fiscal year 2009-2010, the attorneys filed 186 briefs in the state appellate courts, 19 federal pleadings, and 178 other substantive pleadings. During this period, 14 cases were argued by the appellate attorneys at the state appellate courts.

F. Misdemeanor and Traffic Division

According to state Judiciary statistics, approximately 200 misdemeanor and traffic cases are generated each day in the state's First Circuit, which is Oahu. Accordingly, the **Misdemeanor/Traffic Division** handles an extraordinarily high volume of cases, up to thousands in a single month. Typical cases include traffic matters such as driving under the influence of alcohol or drugs, criminal violations, petty misdemeanors, and full misdemeanors committed on the island of Oahu.

This division has one chief, one deputy division chief, one captain, 16 trial lawyers, and approximately 20 support staff. Prosecutors from this division are assigned to courtrooms at district courts in Honolulu, Pearl City, Wahiawa, Kaneohe, and Waianae. The assigned attorneys screen cases, draft written complaints, and conduct arraignments, motions, trials, and sentencing for the wide variety of cases that are prosecuted in these courts. An attorney assigned to this division does specialized prosecution in street solicitation, Waikiki visitor crimes, and "Weed and Seed" cases (see more information regarding "Weed and Seed" in the section on Community Prosecution).

G. 2010-2011 Legislation Summary

2010 Legislative Activity: PAT sponsored or supported the following bills which passed in 2010 that:

- a) Refined the ignition interlock program which will require adjudicated drunken drivers to place an ignition interlock device on their vehicles beginning in January 2011. The ignition interlock is designed to prevent drivers from starting their vehicles when the driver has a measurable amount of alcohol in their system. Act 166 was signed by the governor on June 14, 2010; and
- b) Added the offenses of Unauthorized Entry in a Dwelling, Unauthorized Possession of Confidential Personal Information and Methamphetamine Trafficking in the Second Degree to the list of felonies which may be charged via information. Charging by information will permit these criminal cases to be initiated by the submission of documents setting forth probable cause to a judge rather than requiring witnesses to come to court to testify. Act 114 became effective on May 17, 2010.

H. Community Prosecution

Community Prosecution (CP) program is a proactive, community oriented, problem-solving approach to law enforcement that embraces the role of the community in solving community crime problems. A key component of community prosecution is collaboration; private and public partnerships are developed and directed toward crime prevention goals. The CP team consists of two attorneys who actively engage in a variety of initiatives designed to reduce crime and improve the quality of life in our community. Community prosecutors work closely with residents, law enforcement, and other crime-fighting partners to solve the crime problems that are as varied as the demographically diverse communities on Oahu.

2010 Ola Pono Awards – Leadership and Service to Families Promoting Drug-Free Lifestyles.

Honolulu community prosecutors Cecilia Chang and Tana Kekina-Cabaniero, Hilo community prosecutor Mitchell Roth and drug abatement Deputy Attorney General Mark Miyahira have been recognized at the 2010 Ola Pono Awards for our state-wide community prosecution efforts on March 11, 2010. The Ola Pono Award recognizes those who "make meaningful, substantial contributions to our community by promoting safe, healthy and drug-free lifestyles."



Honolulu Prosecutor Peter Carlisle, Deputy Prosecuting Attorney Tana Kekina-Cabaniero, Senior Deputy Prosecuting Attorney Cecilia Chang, Kapalama Teacher Roy Morigawara, Hilo Deputy Prosecuting Attorney Mitchell Roth, Hilo Prosecutor Jay Kimura, March 11, 2010, Ola Pono Awards Banquet, Honolulu, Hawaii.

Honolulu community prosecutors have accomplished the objectives that they set out to achieve. In 2009-2010, the CP team partnered with Hilo community prosecutor Mitchell D. Roth to co-present strategies at the National Weed and Seed Conference in July 2009. The CP team has also created and conducted trainings and meetings on community prosecution techniques and strategies in neighborhoods island-wide; provided resources, structure and support for new community prosecution initiatives that sprung from these training sessions; solicited in-kind support for our Youth Violence Prevention Program (P.A.V.E.) and promoted the Micronesian acculturation booklet that the CP team helped state agencies to produce.

Weed and Seed – Honolulu community prosecutors have continued to improve the prosecution of offenders in Weed and Seed neighborhoods. Prosecutors in partnership with police have maintained the weeding effort.

State of Hawaii Department of Education Truancy Project (June 2009 – March 2010). Based on her nationally recognized work in coordinating youth crime prevention initiatives in the Weed and Seed sites (2003 U.S. Dept. of Justice CCDO Honorable Mention Award – Youth Gangs; 2005 U.S. Dept. of Justice CCDO National State Coordination Award Truancy Sweeps), Deputy Prosecuting Attorney Tana Kekina-Cabaniero serves on truancy taskforces with the State Department of Education at Campbell High School and Farrington High School. Since June 2009, new partnerships and problem-solving initiatives have evolved with Ms. Kekina-Cabaniero serving on a planning committee with the State Department of Education, the State Department of the Attorney General, and the State Department of Health Office of Youth Services. The planning committee hosted a statewide truancy conference on November 5, 2009 for stakeholders in all Hawaii school districts to devise plans to address the truancy problems in their respective communities.



Pictured: Deputy Prosecuting Attorney Tana Kekina-Cabaniero (right) with Waipahu Intermediate School students.

The 15 secondary schools in attendance formed teams of administrators, counselors, teachers, police, community members and service providers; then drafted a truancy action plan specific to their school's needs. 10 schools attended a follow-up training on March 4, 2010 to further work on their plans, receive technical assistance and access more community resources.

"P.A.V.E." Prosecutors and Advocates for Violence Education: Honolulu community prosecutors continue to provide technical support to the two schools that have adopted P.A.V.E. Kapalama Elementary School teacher Roy Morigawara teaches the P.A.V.E. curriculum to the 5th grade classes, reaching approximately 120 students per year. Hau'ula Elementary School has incorporated the program into its character development class.

- Hau'ula Elementary School Donations (October 2009) and Field Trip (February 11, 2010). From September through October 2009, community prosecutors solicited in-kind donations to support Hau'ula Elementary School, and invited Hau'ula Elementary School for a field trip to the Department of the Prosecuting Attorney on February 11, 2010. Prosecutor Peter Carlisle gave a PowerPoint presentation to the students who thereafter toured the Honolulu historic district.
- Gift to Kapalama Elementary School (March 11, 2010). At the Ola Pono Awards Banquet, Honolulu community prosecutors honored Kapalama educator Roy Morigawara for his invaluable contributions to P.A.V.E., including his initial review of the curriculum to ensure compliance with Department of Education requirements and the subsequent integration of P.A.V.E. into Kapalama's regular curriculum.



March 11, 2010 P.A.V.E. teacher Roy Morigawara (center) is honored by Deputy Prosecuting Attorneys Tana Kekina-Cabaniero (left) and Cecilia Chang (right), and Deputy Attorney General Mark Miyahira (not shown), with the Ola Pono gift of \$500 for the benefit of Kapalama Elementary School.

Drinking in Public Housing Common Areas – “Act 34”: Throughout 2009, community prosecutors collaborated with police and state public housing officials to develop a unified state and local enforcement strategy to implement a new legislative ban on the consumption of alcohol in public housing areas. Community prosecutors continue to serve as consultants on Act 34 cases.

I. **Specialty Courts**

PAT dedicates one deputy prosecuting attorney (DPA) for participation in the Hawaii drug court program designed to provide justice for and address the needs of non-dangerous drug offenders. The DPA attends drug court sessions once a week, alternating weeks for calendars from 8:30 a.m. to 12:00 noon, and morning to afternoon. These court sessions are utilized to monitor the progress of drug court clients and provide the prosecution's perspective on dealing with program infractions. In addition to the regularly scheduled court sessions, the DPA attends all other drug court proceedings such as termination hearings, prepares memoranda of law and argues constitutional motions, conducts jury-waived trials, and argues sentencing. The prosecutor also reviews all applicants for drug court and plays an integral part with the Judiciary in selecting appropriate candidates for this program. The prosecutor also assists in developing and improving the program, attends drug court advisory committee meetings, educates personnel in PAT, the Honolulu Police Department, and the community about the program, and has created a written manual of procedures, policies, and guidelines.

Between July 1, 2009 and June 30, 2010, 50 new defendants were petitioned into the Hawaii Drug Court program. During that time, 34 defendants graduated, spending an average of 22 months in the program. The Hawaii Drug Court terminated six defendants for non-compliance with program rules, all of whom received prison sentences. As of June 30, 2010, the Hawaii Drug Court program had 143 participating defendants.

PAT also participates in other specialty courts within the state judicial system, including mental health court and HOPE probation.